

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

Federal-State Joint Board)	
On Universal Service Seeks)	
Comment on Certain of the)	
Commission's Rules Relating)	CC Docket No. 96-45
To High-Cost Universal)	
Service Support and the ETC)	
Designation Process)	

REPLY COMMENTS OF THE
WASHINGTON INDEPENDENT TELEPHONE ASSOCIATION

I. Introduction: The financial stress on the federal universal service fund is aggravated by the way in which wireless ETCs are designated.

The wireless ETCs argue that there really is no present problem with the federal universal service fund and the way in which wireless ETCs are designated.¹ However, that argument is self-serving. It is the wireless companies that benefit from the existing system where little heed is paid to the public interest test. It is the wireless companies that benefit from lackadaisical review of ETC applications by state commissions interested in promoting competition or acting on the misguided notion that designation of additional ETCs will cause additional federal monies to flow to the state.

The Joint Board is absolutely correct in calling for comments. There is a growing problem. The rate of growth in the universal service fund may soon make it politically unacceptable and cause it to collapse under its own weight. The need for this review is timely. The suggestions of the wireless companies to wait until 2006² should be seen for what it is, no more than a desire to continue to manipulate

¹ See, e.g., Comments of Rural Cellular Association and The Alliance of Rural CMRS Carriers ("RCA-ARC") at 6-9.

² See, e.g., the Comments of RCA-ARC at 8-9, Western Wireless Corporation at 16, and US Cellular Corporation at 10-11.

the existing system for the financial benefit of the wireless carriers without advancing the cause of universal service.

On this point, the Comments of the National Association of State Utility Consumer Advocates (NASUCA) are instructive. At page 3 of its Comments, NASUCA states as follows:

Given recent substantial changes in the regulation of telecommunication markets and the changes in those markets themselves, it is now time for the Federal-State Joint Board on Universal Service ("Joint Board") and the Federal Communications Commission ("Commission") to reevaluate the system [ETC designation process] as a whole and to take steps to protect the integrity and sustainability of the universal service fund.

* * *

Central to any consideration of these issues will be the Joint Board's determination of the *essential* purposes of universal service and the nature of services that should be supported by the high-cost fund under Sections 214 and 254 of the Act. . . . The universal service fund should be competitively neutral, but it should not be used to artificially create competition. Such policy would be doomed to failure and would represent a particularly inefficient use of public support. [Emphasis in the original.]

II. The Public Interest Test Must be Given Meaning:

A more rigorous application of the public interest

test is needed. The wireless carriers and some state commissions argue that no change is needed; the public interest test is applied correctly.³ However, NASUCA correctly observes that the public interest test has not been properly applied:

It appears that, in finding that CETCs should be designated in rural ILECs' territories, the Commissions in some states have found the mere encouragement of competition sufficient under the law to meet the public interest test. If that were sufficient, Congress would not have needed to establish the public interest test; the Commission states would simply have been directed to authorize multiple ETCs in all ILECs' territories, rural or not.⁴

NASUCA is absolutely correct. There would be no need for Congress to create the distinction between designating ETCs in the areas served by non-rural companies and those areas served by rural ILECs⁵ unless Congress intended something more than the mere advancement of competition.

WITA has argued in other dockets, and GVNW Consulting, Inc.⁶ has argued in this docket, for a more carefully articulated analysis of the public interest test. The analysis must give intent to the language as envisioned by Congress. For example, Senator Dorgan when he introduced the Farm Team amendments which included the public interest

³ See, e.g., Western Wireless Corporation Comments at 13; Washington Utilities and Transportation Commission ("WUTC") Comments at 20-21.

⁴ NASUCA Comments at p. 9.

⁵ See, 47 U.S.C. 214(e) (2).

⁶ GVNW Comments beginning at p. 5.

finding before designating a second ETC in a rural area,
stated:

The protection of universal service is the most important provision in this legislation. S.652 contains provisions that make it clear that universal service must be maintained and that citizens in rural areas deserve the same benefits and access to high quality telecommunications services as everyone else. This legislation also contains provisions that will ensure that competition in rural areas will be deployed carefully and thoughtfully, ensuring the competition benefits consumers rather than hurts them.⁷

This intent is echoed by Senator Hollings statement:

The need to protect and advance universal service is one of the fundamental concerns of the conferees in drafting this conference agreement.⁸

Senator John F. Kerry of Massachusetts (D-MA) stated: "The conference report also maintains universal service as a cornerstone of our Nation's communications system." 142 Cong. Rec. S687, S710.

This view of the public interest test has been applied by the courts. For example, in Alenco Communications, Inc. v. FCC, 201 F.3d 608, 615 (5th Cir. 2000) the 5th Circuit stated:

The FCC must see to it that *both* universal service and local competition are realized; one cannot be sacrificed in favor of the other. The Commission therefore is responsible for making the changes necessary to its universal service program to ensure that it survives in the new world of competition. (Emphasis in original.)

⁷ 142 Cong. Rec. S7951-2.

⁸ 142 Cong. Rec. S687-8.

What Congress intended, and what the courts are saying is that the public interest test contained in 47 U.S.C. 214(e)(2) is one that must be applied within the context of advancing and preserving universal service, not simply the promotion of competition.

III. Designation of Second ETCs in Rural ILEC Areas Requires the Establishment of Minimum Standards:

Some of the commentators, for example, the Washington Utilities and Transportation Commission, argued that the Commission lacks any jurisdiction to establish minimum standards for the designation of ETCs.⁹ This argument is incorrect. The Commission has the authority to establish minimum standards. Such minimum standards are necessary to ensure that a basic level of requirements are met under the national policy of advancing and preserving universal service set out in 47 U.S.C. §254.

The Comments of NASUCA offer an interesting perspective on this point. Remember, these are the comments from the body representing the consumers in the various states. NASUCA points out that

Under current rules, states have something of a conflict of interest. That is, there may be a bias toward granting of ETC status because, when new ETCs

⁹ WUTC Comments at 20-21.

are created, more federal dollars flow into the state. Conversely, there is a disincentive for states to ensure that the public interest is fulfilled on a national basis because the benefits of additional federal funds may outweigh state regulators' concerns about the sustainability of the federal program. The bias and potential for inconsistent rules governing ETC designation can only be overcome by more specific and mandatory federal guidelines.¹⁰

NASUCA goes on to compare the differences between ILECs and wireless carriers as one of the reasons for requiring minimum standards:

ILECs typically provide high quality, highly reliable service ubiquitously throughout their service territory and are providers of last resort for that territory. Moreover, customers of ILECs have the substantial benefit of state regulation, which enforces service quality rules, billing and collection rules, and ensures just and reasonable rates. By contrast, wireless carriers are generally unregulated entities that provide highly variable service quality, varying levels of consumer service, unilaterally determined billing and collection policies, unilaterally determined rates and have no requirement to provide facilities in specific areas.¹¹

To remedy these inconsistencies and to fulfill the policy of public interest under the universal service program, NASUCA recommends that an ETC be required to offer at least one calling plan that provides unlimited local calling minutes, equal access to IXCs and a monthly price comparable or lower than charged by the ILEC. NASUCA also argues that a CETC should be subject to the state

¹⁰ NASUCA Comments at 8-9.

¹¹ NASUCA Comments at 8.

regulatory authority for consumer protection rules, billing and collection rules, and service quality. WITA supports NASUCA's Comments on this point.

IV. Support for Primary Lines:

Many of the commenters argue that support should be provided only for the primary line. GVNW does a very good job in its Comments in pointing out why use of the "primary line only" approach is not workable. WITA supports GVNW's Comments.

V. ETC Designation Should be Based Upon the Applicants' Costs, not the Incumbents' Costs:

In its opening Comments, TCA, Inc. points out that the current methodology for calculating support for CETCs violates the principle of competitive neutrality. TCA asserts that if the arguments of wireless carriers are correct that wireless carriers provide service in rural areas at a much lower cost than a wireline provider, "then the additional support being given to wireless CETCs, support based on the costs of wireline providers, is an unfair competitive advantage that skews the marketplace."¹² TCA then points out that Wall Street recognizes that a

¹² TCA Comments at p. 2.

windfall is being provided to wireless carriers under the current rules.¹³

NASUCA argues that the support level to a second ETC should be based upon that ETC's costs. In other words, if public interest supports designating a second ETC in a rural area, then after that designation is made, the support level is determined by the second ETC's own costs, not the costs of the incumbent provider. Support for the second ETC would be capped at the per line support for the incumbent provider.¹⁴

As NASUCA states:

ILECs continue to serve as the only reliable carrier of last resort. Thus it would not be workable, for example, to limit ILEC support to the level of a lower-cost wireless carrier's support. However, support for CETCs must be capped at the level of ILEC support in order to ensure a sustainable high-cost program and mitigate the risk of uneconomic support for very high-cost carriers.¹⁵

WITA agrees that support for a second ETC should be predicated on that ETC's costs, not the costs of the rural telephone company.

CONCLUSION

WITA urges the Joint Board take the following steps:

¹³ Ibid.

¹⁴ NASUCA Comments beginning at p. 11.

¹⁵ NASUCA Comments at p. 12.

- Address the need for a more rigorous application of the public interest test. The applicant for ETC status must show how a second ETC in a rural area will advance and preserve universal service and demonstrate that designation will not foster uneconomic competition to the detriment of the consumers in the areas sought to be served.
- Recommend a set of national standards that would apply as the minimum criteria for designation of a second ETC in a rural area so that there is some consistency in the national program contained in 47 U.S.C. §254 for the advancement and preservation of universal service. This is a national program and there should be a minimum set of national standards. These national standards would include the requirement for any carrier to meet the same service quality and customer service requirements that the incumbent ETC must meet.
- Recommend that the support that a second ETC receives should be based upon the second ETC's own costs, capped at the per line amount received by the incumbent provider.
- Recommend that support should continue to be provided for all lines.

Thank you for the opportunity to comment.

Respectfully submitted this 3rd day of June, 2003.

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